

# **Request for Information for Electronic Filing Service Providers**

**INFORMATION DUE:  
4:00 PM, EASTERN DAYLIGHT TIME  
FRIDAY, MAY 4, 2012**

**VENDOR CONFERENCE CALL:  
4:00 PM, EASTERN DAYLIGHT TIME  
TUESDAY, APRIL 17, 2012**

PROPOSALS WILL BE SENT TO:

Michigan Supreme Court  
State Court Administrative Office  
Judicial Information Systems  
925 W. Ottawa, Lansing Michigan 48913  
ATTN: EFSP RFI  
TELEPHONE NUMBER: 517-373-8777



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## 1. Description of Purpose

The purpose of this Request for Information (RFI) is to develop a list of potential Electronic Filing Service Providers (EFSP) to participate in the statewide Michigan E-Filing project. Vendors who respond will be invited to participate in an EFSP Advisory Group that will provide technical and other recommendations to the Michigan Supreme Court, State Court Administrative Office and the E-Filing Project Committee.

This document is part of a set of three tender offers. These offers are:

1. EFM/EDMS RFP
2. Electronic Filing Service Provider (EFSP) Request for Information (this one)
3. Self-Represented System E-Filing Interface System RFP (issued at a later time)

## 2. Project Introduction and Overview

E-filing in Michigan courts is currently authorized by Supreme Court administrative order on an individual basis. At the present time there are six (6) active e-filing pilot projects in the courts. Although it is anticipated that the pilot e-file projects will continue for the foreseeable future, the SCAO and Supreme Court desire a centralized model that will support e-filing for all case types and case management systems.

The Supreme Court has established an E-filing Advisory Committee which is working on rules and standards for e-filing in Michigan. The Committee is staffed by representatives from the State Court Administrative Office, Supreme Court, and Court of Appeals. The Committee has accepted and entered into a contract with the NCSC to assist in their effort to develop a statewide strategy and solution for E-filing. This RFI and the other RFP listed above are deliverables from this work.

It has been determined by the E-Filing Advisory Committee that the LegalXML ECF 4.0x standards approach is the one that will be used as the basis for the statewide E-Filing project. This standard provides for a central EFM and ideally, competing EFSP vendors to provide the best price performance for the state's legal and business professionals. The committee also has the goal of providing E-filing for all courts and case types. This in turn means that government organizations with limited funding will need EFSP capabilities that in most circumstances cannot be paid for using a transaction model. Therefore an application purchase option will be needed in the future.

Responding to this RFI **does not** preclude your organization from being able to respond to the EFM RFP or later to the Self-Represented Litigant RFP's.

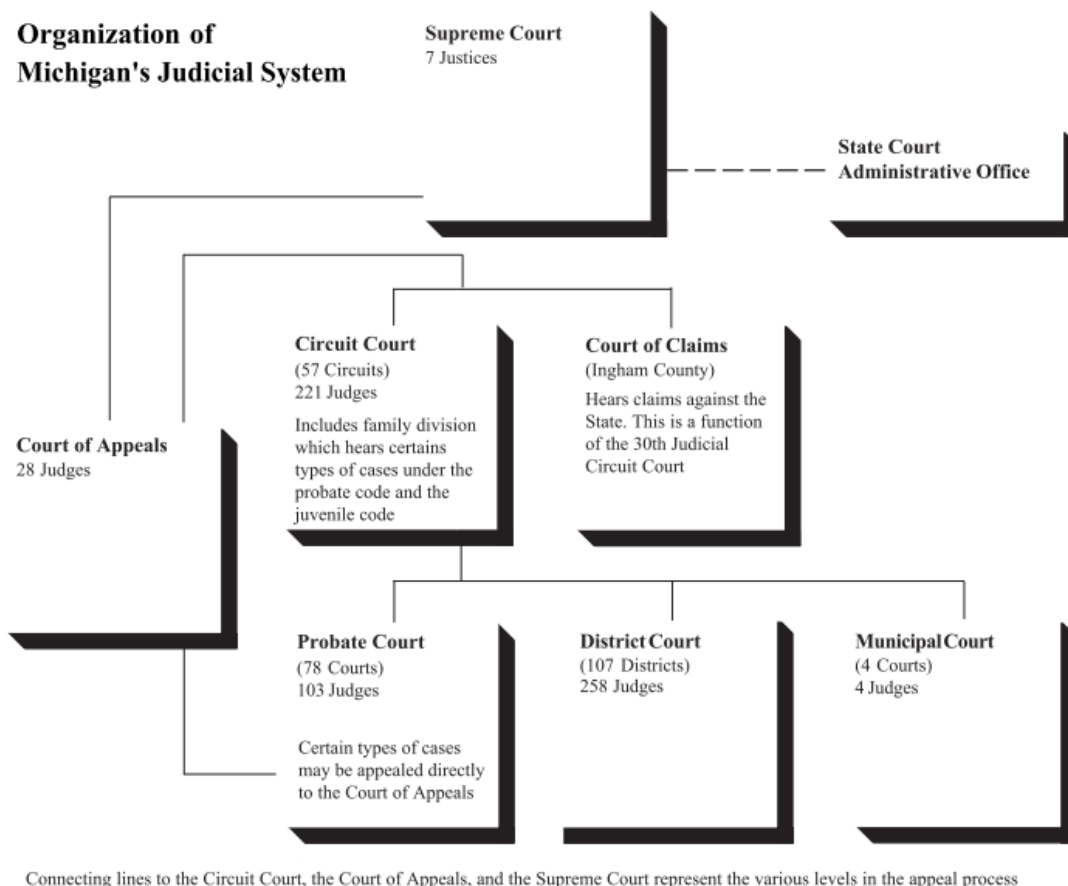
Several large court systems similar to Michigan (Texas, Utah, and Florida<sup>1</sup>) have made the decision to provide an E-filing EFM "portal" system that allows multiple non-court services to electronically communicate with the courts. These providers are generally known as Electronic Filing Service Providers (EFSP). This "open" approach is also used to allow the competitive marketplace to set the services and pricing to the customer, attorneys and other business users of court services. It also allows for government filers (law enforcement, prosecutors, and public defenders) to choose either a commercial service, an application, or develop their own EFSP capabilities. And the approach allows the SCAO to focus their efforts on a single EFM and court implementation.

This is not to say that there aren't many challenges ahead in implementing this information architecture. Thus a multi-year implementation will be necessary due to the size and complexity of the system.

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<sup>1</sup> See Appendix A for brief descriptions of the Texas and Utah EFM/EFSP systems.

### 3. Court Organization<sup>2</sup>



Some key resources for proposing vendors are:

Michigan Courts Published Summary Reports

<http://courts.michigan.gov/scao/resources/publications/reports/summaries.htm>

Michigan Court Administrative Regions

[http://courts.michigan.gov/scao/services/ct\\_admin\\_regions\\_map.pdf](http://courts.michigan.gov/scao/services/ct_admin_regions_map.pdf)

Michigan Court Administration Reference Guide

<http://courts.michigan.gov/scao/resources/publications/manuals/carg.htm>

List of Michigan Court Publications and Manuals

[http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg\\_app.pdf](http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg_app.pdf)

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<sup>2</sup> Graphic below is from the court's One Court pamphlet -

<http://courts.michigan.gov/scao/resources/publications/pamphlets/onecourt.pdf>

#### 4. Judicial Officers and Courts<sup>3</sup>

The **Michigan Supreme Court**, Michigan's court of last resort, consists of seven justices who are elected for eight-year terms. In 2010 the court received 1,960 case filings.

The **Michigan Court of Appeals** is the intermediate appellate court between the trial courts and the Michigan Supreme Court. While the Court of Appeals was created by the 1963 Michigan Constitution, its jurisdiction is established by statute. Court of Appeals practices and procedures are governed by the Michigan Court Rules, which are established by the Supreme Court. Court of Appeals judges' salaries are set by the Legislature. The Supreme Court chooses a chief judge for the Court of Appeals every two years. There are 28 Court of Appeals Judges assigned to four districts that received 6,177 filings in 2010.

The **Circuit Court** is the trial court of general jurisdiction in Michigan, presiding in all actions except those given by state law to another court. The circuit court's original jurisdiction over criminal cases includes felonies and certain serious misdemeanors, as well as civil cases where the amount in controversy is \$25,000 or more. The court also handles family division matters, cases where a party seeks an equitable remedy, and appeals from other courts and administrative agencies.

The state is divided into judicial circuits along county lines. The number of judges within a circuit is established by the Legislature to accommodate the circuit's workload. In multicounty circuits, judges travel from one county to another to hold court sessions. There are 221 authorized judge positions that received 301,374 filings in 2010.

The **Court of Claims**, a function of the 30th Circuit Court of Ingham County, has jurisdiction over claims against the state or any of its departments. In 2010, 118 cases were filed with the Court of Claims. Of these cases, 36 were related to state taxes. The Court of Claims also hears highway defect, medical malpractice, contracts, constitutional claims, prisoner litigation, and other claims for damages.

The **Probate Court** has jurisdiction over cases that involve the admission of wills, administration of estates and trusts, guardianships, conservatorships, and the treatment of mentally ill and developmentally disabled persons.

Each county has its own probate court, with the exception of ten northern counties that have consolidated to form five probate court districts. Each of those probate court districts has one judge. Other probate courts have one or more judges. There are 103 judges that received 61,468 filings in 2010.

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<sup>3</sup> Excerpted from the 2010 Michigan Courts Annual Report -

<http://courts.michigan.gov/scao/resources/publications/statistics/2010/2010ExecSum.pdf>

The **District Court** has exclusive jurisdiction over all civil claims up to \$25,000, including small claims, landlord-tenant disputes, land contract disputes, and civil infractions. The court may also conduct marriages in a civil ceremony.

The district court's small claims division handles cases in which the amount in controversy is \$3,000 or less. Small claims litigants represent themselves; they waive their right to be represented by an attorney, as well as the right to a jury trial.

Civil infractions are offenses formerly considered criminal, but decriminalized by statute or local ordinance, with no jail penalty associated with the offense. The most common civil infractions are minor traffic matters, such as speeding, failure to stop or yield, careless driving, and equipment and parking violations.

District courts handle a wide range of criminal proceedings, including misdemeanors, offenses for which the maximum possible penalty does not exceed one year in jail.

There are 258 judges that received 2,799,537 case filings in 2010.

There are four **Municipal Courts** in Michigan with four judges that received 14,483 case filings in 2010.

## 5. County Clerk and Clerk of Circuit Courts

The County Clerk is an elected position created by state constitution. In addition to other statutory duties, the County Clerk serves as clerk of the Circuit Court and as clerk of the Family Division of the Circuit Court.

In District Courts of the first class, in each district of the second class, and in each political subdivision where the court sits within a district of the third class, the district judge or judges of the district shall appoint a clerk of the court who serves at the pleasure of the judge or judges.

Probate judges in a county or probate court district, or the chief probate judge in a county having 2 or more probate judges may appoint a probate register.

## 6. Supreme Court Administrative Office (SCAO)

The State Court Administrator is charged with administering the state's trial courts pursuant to the policies developed by the Supreme Court. Under the Michigan Court Rules, the State Court Administrator supervises and examines administration of the courts; examines the status of calendars of the courts; collects and compiles statistical and other data; recommends the assignment of judges where courts are in need of assistance; monitors the efficiency of caseload management; prepares budget estimates of state appropriations needed for the judicial system; monitors judicial business;

approves and publishes court forms; and certifies the adequacy of recording devices used in making records of proceedings in the trial courts.

**Judicial Information Systems** is a division of the SCAO. Their primary initiatives are the Statewide Trial Court Case Management System, Traffic Tickets Paid Online, Judicial Data Warehouse, Judicial Network Project, and Video Conferencing. For overview descriptions of these programs see: <http://courts.michigan.gov/jis/techinit/initindex.html>

## 7. E-Filing/E-Service Projections

The Circuit Court in Oakland County has reported approximately 14 documents per civil case are recorded within their EDMS. However please note that this average may not reflect document E-filing projections. NCSC has learned that both Colorado and Orange County, California recorded an average of 7 E-filings per civil case in the past. And of course system implementation and E-filing uptake rates will impact projections.

It is also currently anticipated that most Michigan courts will not impose mandatory E-filing during the duration of the agreement. However, vendors may project mandatory E-filing after that time as part of their cost recovery proposal.

A rough yearly filing and electronic document storage estimate by court level is shown below:

	2010 Filings	Docs per case	Docs filed	Pages per doc	Pages in Files	Storage in Bytes (x 50K per page)	Storage Size in GB
Court of Appeals	6,177	6.7	41,368	N/A	N/A	N/A	22
Circuit Court, Appeals, Criminal, Civil, Domestic Relations	196,505	14.0	2,751,070	3.5	9,628,745	481,437,250,000	448
Circuit Court Protection Order	38,742	3.0	116,226	3.5	406,791	20,339,550,000	19
Circuit Court Juvenile	57,701	14.0	807,814	3.5	2,827,349	141,367,450,000	132
Circuit Court Adoption	4,538	14.0	63,532	3.5	222,362	11,118,100,000	10
Circuit Court Miscellaneous Family	3,632	14.0	50,848	3.5	177,968	8,898,400,000	8
Probate	61,468	7.0	430,276	3.5	1,505,966	75,298,300,000	70



District Court Non-Traffic, Traffic, Civil, Summary	3,217,063	3.0	9,651,189	1.5	14,476,784	723,839,175,000	674
<b>Total</b>	3,585,826		13,870,955		29,245,965	1,462,298,225,000	<b>1,384</b>

## 8. Current Technology and Data Overview

The Michigan courts can either join the statewide JIS CMS or acquire their own. As shown in Appendix B most courts use the JIS CMS. However there are several large jurisdictions that have purchased or developed their own.

Approximately 60 courts have an electronic document management (EDMS) capability. These systems are implemented at each court location with no sharing capability. Additionally, nearly one-half have no workflow capability.

Seven courts have implemented electronic filing. They are:

- Macomb County - <http://www.macombcountymi.gov/circuitcourt/efile.htm>
- Michigan Court of Appeals - <http://coa.courts.mi.gov/efile/>
- Oakland County Clerk/Register of Deeds - <http://www.oakgov.com/clerkrod/efiling/>
- Oakland County Probate Court - [http://www.oakgov.com/probate/program\\_service/online\\_services.html](http://www.oakgov.com/probate/program_service/online_services.html)
- Ottawa County - <https://www.miottawa.org/CoGov/Clerk/efiling.htm>
- 3rd Judicial Circuit, Wayne County - <https://www.3rdcc.org/eFiling.aspx>
- 13th Circuit Court - <http://www.13thcircuitcourt.org/Page5858.aspx>

### SCAO Technology

The SCAO has standardized on Microsoft technology using Office, .NET, SharePoint, Team Foundation Server and BizTalk. The office also has experience with Java and IBM MQ Series technology.

### Public Access Systems

A listing of courts with links to their websites is available at:  
<http://courts.michigan.gov/scao/services/dirs/tlinks.htm>

## Judicial Data Warehouse

The warehouse contains more than 40 million case records and has been implemented in 234 courts in 81 counties. The warehouse allows the judiciary and law enforcement to obtain information about pending and closed cases in the state.<sup>4</sup>

### 9. RFI Questions

The SCAO has developed the following questionnaire to gather information from potential participating Electronic Filing Service Providers. Please respond to these questions in an electronic form so that it may facilitate compilation by project staff. We ask that you use the table below to start your response. And if there is additional information you wish to provide, please link it to the response in the table.

Questions	Response
1. Organization's name?	
2. Organization's contact person, address, telephone number, and e-mail address	
3. Is your organization interested in participating as an EFSP in the State of Michigan?	
4. Is your organization interested in participating in the EFSP technical committee?	
5. Do you currently provide court EFSP services?	
6. If yes to the question above, technically, how do you provide those services?	
7. Have you ever sold or provided your system as an application for government users for a fixed cost plus maintenance? If so, where has this been done? And on what operating systems and database platforms have you used?	
8. Where do you provide court EFSP services? Please also provide the Internet links to either the service or to three of the courts that use the services.	
9. Please briefly describe your user registration system.	
10. Do you separately authenticate the users	

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<sup>4</sup> From the 2010 State of the Judicial address (p.8) - <http://www.michbar.org/courts/pdfs/2010%20State%20of%20the%20Judiciary.pdf>

who subscribe to your services?	
11. Is your system able to apply the LegalXML ECF 4.X standards for interface to an EFM?	
12. Have you implemented a system that uses the LegalXML ECF 4.X standard?	
13. Have you implemented any systems that apply the LegalXML ECF 4.X Court Policy standard? If so, where was it used?	
14. Are there any LegalXML ECF 4.X implementation issues that will need to be addressed for the Michigan project to be successful?	
15. In general, besides E-filing message transmission, what other value-add services do you provide to your clients such as E-service?	
16. Specifically, do you provide PDF conversion services?	
17. Do you provide Anti-virus and Malware checking of the filings?	
18. Approximately how many total documents have your systems handled since implementation?	
19. What is the range of costs of your services to the customer in your existing implementations?	
20. What, if any, is the split in service fees between your organization's system and the courts?	
21. How do you handle electronic funds transfer to the courts?	
22. If you use credit/debit cards as a payment method, is your PCI standards compliant?	
23. Does your system provide E-signature or electronic notary capability? If so, please describe.	
24. How does your system normally handle the credit card transaction fees with the courts?	
25. Have you implemented any online court forms as part of your services to courts? If so, please describe and provide links or references.	
26. Please describe your end-user	

implementation and training?	
27. Please describe your help desk support.	
28. Please list or describe any other applicable services offered by your company.	
29. And briefly, how has your company addressed the issues contained in the article in Appendix B?	

Again, if there is any additional documentation including recommended contract documents, training and/or administration, or additional explanatory information, please provide it in your response.

## **10. RFI Response Information**

It is requested that responses to this RFI be received by the SCAO at the E-mail address or at the Michigan Hall of Justice building (address below) no later than 4:00 PM Eastern Daylight Time on Friday, May 4, 2012. Responses to this RFI may be sent electronically or in hard copy.

Electronic responses should be sent to the following e-mail address:

**EFSPPM@Courts.mi.gov**

Links can be sent to the E-mail address for download if the response is a single or multiple large electronic files.

Respondents choosing to send hard copy responses are asked to include one (1) original and four (4) copies and the response should be sent to the following mailing address:

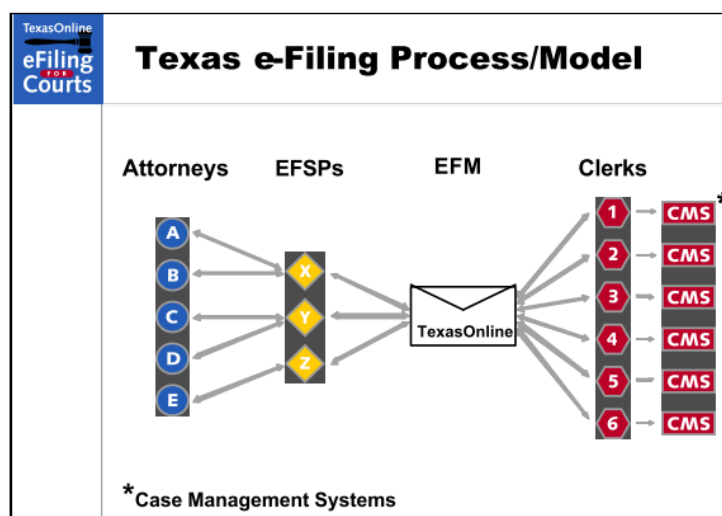
Michigan Supreme Court  
State Court Administrative Office  
Judicial Information Systems  
925 W. Ottawa, Lansing Michigan 48913

Questions pertaining to this RFI should be directed to Jim McMillan at the National Center for State Courts at: [jmcmillan@ncsc.org](mailto:jmcmillan@ncsc.org).

## 11. Appendix A

### Texas

The Texas Supreme Court's Judicial Committee on Information Technology, with support from the Office of Court Administration, has implemented an "official" e-filing solution for the state that is hosted on the Texas.gov website. A precursor to the Texas.gov site – called TexasOnline – is described in a paper titled *The Texas Model*<sup>5</sup>. The graphic in Figure 1 below was presented in this paper to illustrate key components of their e-filing model, including their adopted approach supporting multiple EFSPs that could e-file into any court.



**Figure 1. Texas Electronic Court Filing Model**

Their new site<sup>6</sup> is operated by a third party, NIC, Inc., and is the result of an overhaul of the original TexasOnline site developed by BearingPoint. When accessing the new site, filers are directed to register with one of a number of electronic filing service providers (seven at the time of this writing) that have been certified to provide e-filing in Texas. Once a filer has registered with an EFSP, they can begin e-filing in new and existing cases. Attempts thus far to obtain sample agreements and templates have been unsuccessful, but they did provide the following list of steps that they ask EFSPs to follow for certification:

- Complete a Non-disclosure Agreement (NDA)
- Submit:
  - Articles of Incorporation
  - Dun & Bradstreet Comprehensive Report
  - Annual Report for last two years
- Complete a service agreement

<sup>5</sup> *The Texas Model*, by Peter Vogel and Mike Griffith, available on the Texas Courts website at <http://www.courts.state.tx.us/jcit/Efiling/pdf/TheTexasModel.pdf>

<sup>6</sup> Texas.gov e-filing website: <http://www.texas.gov/en/tx-efiling/>

- Receive a System Developer Kit (SDK) and technical specifications
- Develop the service provider application
- Pay start-up fee
- Complete certification testing
- Implement the EFSP application

## Utah

Utah also adopted a model that would allow multiple e-filing vendors with a goal of EFSPs having responsibility for supporting their clients and the court having responsibility for supporting only court staff. They elected to allow any EFSP that completes their certification process to operate as an EFSP in Utah. They contracted with one e-filing vendor (Tybera Development Group, Inc.) to host the EFM and provide assistance to any vendor wishing to complete the certification process. In this arrangement, Tybera has the option of charging a fee to EFSPs for assistance with validation, testing, etc.

The court publishes an E-filing Application Programming Interface (API) along with approximately 30 test cases that are used in the certification process to test/validate compliance with the court's e-filing system. Once certified, the EFSP agrees to implement any changes required by the court. Any fees for e-filing are set by the vendor and are not a concern of the court. The court does not charge any additional fees for e-filing.

Of particular interest in this model:

- Bulk filers can act as their own EFSP, including state agencies such as Workforce Services, Department of Revenue, and Department of Social Services.
- Non state agencies may also act as their own EFSP – for example, the University of Utah and specific private attorneys that do the majority of debt collection cases may file (thru the same API) directly from their CMS to the court CMS with no clerk intervention.
- Private attorneys and law firms may also choose to act as their own EFSP and build their own e-filing interface using the API.

Additional information, including an E-Filing Guide and the Non-Disclosure Agreement they require of EFSPs, can be found on the court's website at

<http://www.utcourts.gov/efiling/>.

## 12. Appendix B - E-Filing Deals: the Devil is in the Details

Retrieved from FindLaw at:

[http://technology.findlaw.com/resources/scripts/prINTER\\_FRIENDLY.pl?page=/articles/00006/009994.html](http://technology.findlaw.com/resources/scripts/prINTER_FRIENDLY.pl?page=/articles/00006/009994.html)

By Andrew Zangrilli

*Because electronic court filing solutions perform such a critical function, extra care must be taken when defining relationships with EFSPs.*

### **Perspectives on Security**

Security is a major issue surrounding e-filing, and it is also an issue that means different things to different groups.

Certainly, electronic court filing technology vendors have taken great efforts to ensure the technical integrity of the data. E-filing solution providers boast of their product's daily security audits, multiple firewalls, load balancers, and redundant networks. While this type of security is best understood by engineers, attorneys should know that there are several different models of e-filing available with varying levels of vendor control. Each have their particular strengths and weaknesses that a firm technology committee should evaluate carefully in conjunction with its CTO.

Courts have also given serious consideration to e-filing security issues in a two notable ways:

First, courts have established rules of court that are security-focused. In California, for example, court rules address the multi-pronged issue of access to e-filed materials, including authorized parties (Rule 2073(c)), limiting remote access (Rules 2050-2060), and sealing documents (Rules 2070-2076). These rules are not completely abreast of the new technology, however, and Hon. Terrence Bruniers of the Contra Costa County Superior Court of California points out that courts may need new rules that: 1) limit the inadvertent disclosure of sensitive information; and, 2) limit the court's classification as a "publisher" under current defamation or unauthorized disclosure theories of tort liability.

Second, federal court technology committees have established security-conscious e-filing models. In a March 1997 Discussion Draft, Leonidas Ralph Mecham, director of the Administrative Office of the U.S. Courts, made reference to a centrally funded and supported model electronic court filing system that would "provide standard core capabilities and have a modular design to facilitate staged implementation, tailoring, and enhancement at the local court level." While the report established standards and protocol for internal court systems, it left the private sector to the devices of technology vendors. Mecham recommends a "reliance on private industry to develop e-filing modules that the law firms and public will use" to connect with the court's e-filing system.

Now that courts are mandating electronic filing in more and more litigation areas, firms are coming under increasing pressure to implement e-filing systems. Unfortunately, most law



firms do not have the benefit of the same extensive research and analysis used by the courts when deciding on an e-filing system. Law firms that wish to e-file must contract with private e-filing service providers (EFSPs) at an arm's length, much in the same manner as other technology vendors. Unlike other technology providers, however, EFSPs and their solutions play a critical role in the judicial process. Because EFSPs facilitate the official filing, notice, storage and access of litigation documents between the judges, clerks, law firms and the public, extra care must be exercised in defining relationships with EFSPs.

### **E-Filing Issues For Law Firms**

There are plenty of business issues a firm should think about when contracting with an EFSP, such as: 1) disclosure to clients that their affairs may be partially accessible to the public via the Internet, and 2) the impact on work processes, like paper to image conversion, staff training and "e-Advocacy."

One practical security issue discussed here at length is what happens when the vendor-law firm relationship goes sour?

#### ***EFSP Liability: Fiduciary or Agent?***

Although firms are required to maintain a permanent paper back-up record of all documents filed electronically, difficulties could arise if the EFSPs do not perform their data functions as promised. Missed deadlines, un-served documents and non-accessible online filings are just a few of the potential hazards. This issue is particularly poignant when dealing with an EFSPs that hosts the data on its servers, outside of the firm's control. When an EFSP exercises enough control over electronic documents and data, that vendor takes on a role of special trust. As contractors of law firms that transmit, deliver, receive, host and store vital information on behalf of the firm, an argument could be made that an EFSP is a fiduciary of the firm.

A fiduciary is a person entrusted with the property of another, and an implied fiduciary duty arises when the contracting parties clearly intend to create a relationship of special trust. It seems logical that law firms do intend to create such a relationship with an entity that is entrusted with their litigation documents. Similarly, an EFSP could also be construed as a special agent or transfer agent of a law firm, imbued with limited powers to conduct one or more specific acts under particular instructions. As the fiduciary or agent of a law firm, an EFSP could be held to rigorous legal standards of liability.

To contradict the finding of a fiduciary duty or agency relationship, an EFSPs would most likely say that, like a courier, they are simply facilitating the exchange of data, and should therefore bear diminished liabilities similar to other Internet Service Providers (ISPs) and common carriers. Additionally, heightened fiduciary duties are usually found to exist in the realms of real estate, trusts and corporations, as opposed to transferors of electronic data. A judge would most likely weigh the level and quality of control that an EFSP retains over the electronic filings in conjunction with the details of contractual language to determine the appropriate level of liability.

While this is an unsettled issue, a firm in the market for an e-filing system may want to perform further analysis in this area before signing a deal with an EFSP.

## The Devil's in the Details

Although the following issues may seem like doomsday scenarios, the dotcom implosion of 2000 showed that these extreme situations do indeed occur. Here, then, are some additional potential trouble spots and possible solutions (the proposed solutions are simply food for thought and warrant additional legal research):

a) **Breach Due To Non Payment.** Can the EFSPs retain the firm's e-filings in lieu of payment (like a mechanic's lien)? Spell out exactly what happens to the filings in the event of non-payment. If necessary, demand that a backup of the data be held in escrow, to be accessed in the event of a dispute

a) **Intellectual Property .** What if the vendor's systems and/or are the subject of a patent infringement action? Insist that the vendor will either procures rights or modify/remove the infringing features.

b) **Obligations Upon Termination.** Carefully think about termination procedures, and what happens to the services and data hosted by vendor in the event of a dispute. Try to ensure the smooth transition of files when the relationship is over.

c) **Ownership.** If the vendor marks up your document with Legal XML, who owns those markups? Depending on how the contract is worded, any coding that the vendor performs on the data could belong to the vendor. Basically, Legal XML is necessary for the court to process the e-filings within its internal systems. Make sure the Legal XML is deemed property of the client, and that it is not stripped out of the data upon termination of contract.

d) **Marketing & Privacy.** Can the EFSP use the data to "help enhance its client services"? This is standard language that means the EFSP may be able to use any submitted data for internal or external marketing purposes. Most firms will probably want to limit the EFSP's access to the data to essential purposes only.

d) **Bankruptcy.** What happens to the data and services when a law firm becomes insolvent? Most likely, the EFSP will not be able to terminate the contract due to the automatic stay of bankruptcy and must continue to perform e-filing services.

d) **System Downtime.** Since third party hosting may be on an outside system, contracting clients would be wise to get a Service Level Agreement that covers downtime. Given the success of recent attacks on ISP "backbone" connections, it's only a matter of time before another attack temporarily disables a wide radius of Internet connections, which in turn could affect the administration of an e-filed case. It's also advisable to understand local court rules that govern missed deadlines due to EFSP interruption. Specifically, does Internet outage or EFSP failure constitute good cause for delay under the rules of civil procedure?

e) **Force Majeure.** Theoretically, a massive attack on the Internet could be construed as force majeure that excuses the EFSP's performance under the contract. One possible solution is to exclude Internet outages from the force majeure clause.

## Concluding Thoughts

E-filing has substantial advantages over traditional paper filings, and the full-scale adoption of this efficient process will lead to even more radical changes in the judicial system. The outlined considerations are not intended to hinder the contracting process between law firms and e-filing vendors. Rather, they are intended to educate buyers and stimulate beneficial discussions which will hopefully lead to a level of comfort that permits the widespread adoption of electronic court filing systems by law firms.

Software

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